



## Frequently Asked Questions and Answers

### What is Accommodation in Employment?

The *BC Human Rights Code* recognizes that all persons are equal in dignity, rights and responsibilities, regardless of race, colour, ancestry, place of origin, age, sex, physical or mental disability, sexual orientation, religion, marital or family status, political belief and criminal convictions unrelated to the employment.

Accommodation is an equality concept that seeks to build inclusive environments that respect the differences and the rights of a diverse society. Accommodation seeks to eliminate barriers, standards, requirements, practices, policies and rules that adversely affect people on the basis of one or more of the above listed grounds. As a process, accommodation seeks to resolve conflicts by balancing the rights and interests of a diverse society. For example, where a workplace rule may conflict with an individual's religious requirements, a modification, or an adjustment to that rule may be required in order to balance the individual's right to uphold their religious beliefs against an employers' right to a productive workforce. Alternatively, where the capabilities of a person are restricted due to a disability, a reasonable accommodation, such as the purchase of an assistive device, or the restructuring of certain components of their job, may be required in order to allow the disabled person to apply their skills and abilities on a level playing field while still participating in the workforce.

The goal of accommodating differences is to enable the full and equitable participation of all members in society.

### What is the Duty to Accommodate?

The 'duty to accommodate' is a legal requirement arising out of human rights legislation and case law in Canada. Although "duty to accommodate" is not found in the *BC Human Rights Code*, a series of Supreme Court of Canada decisions confirm the duty exists and applies to all provincially regulated employers. Where a barrier exists, or a policy or practice has adverse consequences on an individual in a protected group, the law says that the employer should reasonably accommodate that individual's difference provided they can do so, without incurring undue hardship, or without sacrificing a *bona fide* or good faith requirement of the job.

### Undue Hardship

Courts have determined that accommodation efforts must go to the point of undue hardship. While 'hardship' on its own infers a degree of effort is required, the threshold as to undue hardship is actually quite high. However, once an employer reaches that point, their legal duty to accommodate may be discharged. Factors that are used by the courts to assess the threshold include: financial costs; health and safety risks; and size and flexibility of the workplace. While a successful resolution to an accommodation request will vary greatly from one employer to another, more than mere inconvenience or disruption is expected in all situations.

### Guidance for Employers

Establish an accommodation process that respects the dignity and the privacy of the person seeking accommodation;

Consider and facilitate the process of accommodation once a request has been made;

Determine if a particular request is based on a protected ground of discrimination;

Confirm and secure additional relevant information necessary to assess the accommodation requirements. This may include a medical assessment that identifies abilities or restrictions related to the request, or information that speaks to specific religious requirements;

Ensure an inclusive process that allows for multi-party participation;

Involve those seeking accommodation; listen to and consider their suggestions;

Consider and assess each accommodation request on an individual basis; there is no 'one-size' fits all solution to accommodation;

Be prepared to bear the cost of required medical information or other documentation;

Be willing to take substantial and meaningful measures to secure an appropriate accommodation;

Be flexible and creative. Aim towards identifying the best option suited to the needs of the individual, while respecting the privacy, the autonomy, and the integration of the individual;

Reply to requests in a reasonable time period and keep records of all actions taken.

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# Frequently Asked Questions and Answers - Continued

## Guidance for Those Seeking Accommodation

Just as the courts have provided guidelines for employers in the accommodation process, so too have they commented on corresponding roles and responsibilities of those seeking accommodation. Many are outlined below:

Where possible, advise or inform your employer of your need for an accommodation;

Provide support and assistance in facilitating the process by providing sufficient information as to:

- o why the accommodation is required (a religious requirement, a physical or mental disability, or because of pregnancy or family status);
- o support your request by providing evidence and / or information (ie medical or doctors reports that speak to limitations / restrictions or information that explains specific religious requirements);
- o make suggestions that would work for you (ie. a specific adaptive software or hardware device, extra sick days to allow for increased illness during pregnancy, etc.); and
- o how long the accommodation is required.

Generally, you are only obligated to discuss your requirements with management although you should cooperate with experts whose assistance may be required;

Allow a reasonable amount of time for your employer to reply or respond to your request;

Always participate and cooperate in efforts to make the accommodation work;

Be flexible. Reasonable accommodation may mean something less than a perfect solution; be prepared to consider retraining or relocating in order to take on different job related duties;

If your requirements change, make sure you let management know;

If a solution is offered and you accept it, get it in writing;

If the process loses momentum, provide additional information that may help re-activate it;

If your employer claims they are unable to fulfill your request, ask for written details that explain the decision;

Remember there is no obligation on employers to provide the *perfect solution*. You must be prepared to accept an accommodation that provides a reasonable solution.

The accommodation process can sometimes seem confusing and intimidating. Remember, accommodation is a legal right that infers a corresponding legal duty; all parties have a vested interest in achieving a resolution. Often, the best solutions are achieved when those involved cooperate with one another and respect each of their corresponding roles and responsibilities. Check our online listing of fact sheets, guidelines and policies for more information on the Duty to Accommodate. It is listed under the "Information" section on our website ([www.bchrcoalition.org](http://www.bchrcoalition.org)).

## Educational Opportunities

The Coalition offers educational workshops and training sessions across the province. In cooperation with community groups, employers, labour unions, colleges and others, we provide a range of education, from introductory to intensive, on a variety of topics including: discrimination & harassment, human rights law and administration, how to prevent and deal with discrimination in the workplace, the duty to accommodate, sexual harassment, and how to build inclusive workplaces. We also provide consultation services that you can access at any time. Call us at 604.689.8474 or toll-free 1.877.689.8474 to discuss issues or to schedule a customized session appropriate to your needs.